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ENFORCEMENT:

Former Pa. Gov. Rendell pressed EPA in Range pollution case, emails show

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Former Pennsylvania Gov. Ed Rendell interceded with then-U.S. EPA Administrator Lisa Jackson on behalf of Range Resources Corp. to settle the oil and gas company's high-profile Texas water contamination case, emails obtained by EnergyWire show.

An EPA attorney wrote that Rendell, acting as a "spokesman for Range," met with Jackson in 2011 and "proposed certain terms to the administrator." But the case didn't settle for more than a year after that. When EPA and Justice Department officials in Washington, D.C., dropped the case, Range did not agree to do testing sought by the Texas-based EPA officials. They had wanted Range to test whether natural gas might be seeping into homes from the soil, but that was not part of the agreement.

"Range should ensure that it is not making an explosion hazard at the homes," Al Armendariz, the Dallas-based EPA regional administrator who brought the case, wrote during negotiations with Range.

The messages were included in more than 1,000 pages of emails obtained by EnergyWire in a Freedom of Information Act request from EPA Region 6. They offer behind-the-scenes insights in a case that has come to be seen as a major retreat by the agency amid aggressive industry push-back and support for natural gas drilling by President Obama.

The emails, redacted in significant places, do not give any answer as to why settlement discussions began in the first place. But they deliver a counterpoint, never publicly offered by the agency itself, to the theory that EPA caved in because it had a weak case.

For example, EPA officials grumbled privately in emails the day the case was withdrawn because state oil and gas officials at the Texas Railroad Commission claimed victory over EPA. Commissioner David Porter issued a news release on the withdrawal that accused Armendariz of having engaged in "fear-mongering," among other things.

"Hang in there Al. This [is] just a rant from someone with a myopic view," wrote Deputy Assistant Administrator Steven Chester, who had played a key role in the negotiations.

"Al, this is shameful," wrote EPA Senior Policy Counsel Bob Sussman. "I'm sorry you must endure this." But things went from bad to worse for Armendariz. Less than a month later, Sen. James Inhofe (R-Okla.), an outspoken supporter of the oil and gas industry and a critic of Armendariz, released a two-year-old video of Armendariz comparing his enforcement strategy to Romans who would "crucify" random villagers in retaliation for resistance. Armendariz resigned within days. He now works for the Sierra Club in Texas.

First hints of settlement

Armendariz brought the high-profile case in December 2010 as the Dallas-based director for EPA's Region 6, which includes Texas and surrounding states.

His emergency order charged that Range's shale gas wells were leaking methane gas into two homes in the Silverado subdivision in Parker County, just west of Fort Worth. It also accused the Texas Railroad Commission, which regulates oil and gas but not trains, of failing to protect the homeowners in the neighborhood.

Range denied the accusations then and denies them now. On Monday, Range spokesman Matt Pitzarella stressed that EPA headquarters officials didn't just settle the case, they abandoned it.

"We're pleased that once EPA headquarters became engaged and they reviewed the facts and science they decided to not settle the case, but to fully withdraw their order," Pitzarella said. "This is consistent with state regulators who also determined Range to not cause or contribute to a long-standing, well-

documented matter of naturally occurring methane."

The Railroad Commission exonerated Range after a January 2011 hearing that EPA and the homeowners declined to attend. The first hints of settlement came about two months later, apparently arising out of a discussion between Rendell and EPA's Jackson. But there had been some confusion. A Justice Department lawyer assigned to the Range case had originally said the politician involved was Rep. Charles Rangel (D-N.Y.).

But Scott McDonald, chief of the Water Enforcement Branch in EPA's Office of Regional Counsel, told Armendariz that Rendell had "proposed certain terms to the Administrator" and said he was acting as "a spokesman for Range."

Rendell, who has also served as chairman of the Democratic National Committee, has not previously been associated with Range. Republican former Pennsylvania Gov. Tom Ridge worked for the Marcellus Shale Coalition, an industry group, during 2010 and 2011. An aide to Rendell said he was on vacation and unavailable for comment.

Pitzarella wouldn't confirm any relationship with Rendell and said he was definitely never hired by the company.

"I don't know the extent of the governor's involvement in energy-related matters, but he never functioned as a spokesperson of Range," Pitzarella said.

Work begins

The first indication of active work on a settlement in the Region 6 emails came in October 2011, with the case heading toward its one-year anniversary. Armendariz sent an email to Region 6 Enforcement Director John Blevins.

"Since Range has approached the agency with a thought for improved relationship, you should re-examine our order," Armendariz wrote. He asked Blevins to look at which provisions Range had complied with, which ones it hadn't and which ones EPA should stand firm on and not negotiate.

The discussions picked up rapidly as the Christmas holidays approached. Cynthia Giles, the assistant administrator for EPA's Office of Enforcement and Compliance Assurance, was prodding the negotiations forward.

On Dec. 20, 2011, Andrew Stewart, chief of the litigation and audit policy branch in Washington, said Range had been calling Giles' office to ask about the status of settlement discussions. He said Giles wanted the agency "to explore settlement with the company over the next few weeks," and he had been asked to develop proposed settlement terms.

As officials in Dallas hashed out their response, Blevins pushed for soil-gas sampling near the well to see if gas was rising into homes from the soil. If high levels of methane were found inside homes, Range would have to pay to have the homes properly vented.

The focus on soil-gas testing also relates to another frequent criticism of Armendariz -- that he fretted publicly about the possibility of the landowners' houses exploding, even though they had stopped using the water wells in question. If methane was coming up from the soil into the homes, it could accumulate and cause an explosion.

Blevins also wanted Range to pay to extend a public water system to the homes in the subdivision. Homeowners would pay the monthly water bill but would not need to use a well.

Armendariz wanted Range to deliver water to the residents for another six months while more data was collected. In suggestions to regional staffers negotiating with Washington EPA officials, he said the threat of a penalty should remain on the table if testing showed that Range did contaminate the aquifer.

Armendariz also said Range's test results should be posted publicly on the Internet. They weren't. EnergyWire got them several months after filing a FOIA request (EnergyWire, Jan. 15).

On Dec. 27, 2011, Armendariz outlined a position to take to Washington officials. His "least preferable" option included settling without requiring Range to provide water. But EPA would reserve the right to go after Range again with penalties if testing showed the company had contaminated the aquifer.

To the public, the case was dormant. The Texas Railroad Commission had weighed in nearly a year before, but EPA was still pursuing the case in federal court. Elements of the case were also in federal appeals court.

But discussions continued.

On March 15, 2012, Armendariz was traveling but was asked by Jackson's office to take a call from the then-administrator to discuss the Range case.

On March 21, 2012, the Supreme Court took a broad swipe at EPA's enforcement authority in a Clean Water Act matter commonly known as the Sackett case. Some have attributed EPA's decision to bail out of the Range case to its loss in Sackett. Days after that, and a week before the case was dropped, Armendariz urged the EPA attorneys in Washington to make Range dial back its aggressive tactics in related state court fights. It appears to be a reference to Range's decision to subpoena Sharon Wilson, a blogger and Earthworks activist involved in the case.

"I would suggest continuing to bring up this issue during upcoming conversations with Range, highlighting the need for them to make this happen," Armendariz wrote.

But seven weeks after EPA dropped the case, Range sued one of the landowners, Steve Lipsky, in connection with a video posted on YouTube of flames shooting from a hose connected to his well (EnergyWire, May 21, 2012).

EPA announced its decision to drop the case on a Friday, March 30, 2012. In statements, EPA and the Justice Department said they wanted to shift away from litigation to a "joint effort" involving more testing. Concurrently, Range agreed to do groundwater testing, although it was not made a condition of dismissing the case.

In the weeks before the case was withdrawn, EPA had also agreed to retest groundwater in Pavillion, Wyo., that it had deemed contaminated with hydraulic fracturing fluid and announced that its high-profile intervention in Dimock, Pa., had yielded benign

results. The three-pronged retreat was a dramatic turn away from what had been an assertive posture in shale drilling cases. But the case didn't end there. Almost a month later, Inhofe circulated the "crucify" video. At the same time, the senator sent a six-page letter to Jackson, demanding details answers about the case. Region 6 was assigned the task of answering. With an air of finality, Armendariz told his top staffers to get to work answering the questions.

"There is no higher priority right now than getting started on this letter," Armendariz wrote. "Thanks for all your work. Sorry for the mess."

Three days later, on April 29, he resigned.